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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of:

Docket No. 2922-A

RECEIVED

William C. Fanslow III and Elaine K. Thomas

OCT 31 2002

Serial No.: 09/842,745

Group Art Unit: 1644

TECH CENTER 1600/2900

Filing Date: April 25, 2001

Examiner: P. Gambel

For: METHOD FOR TREATMENT OF TUMORS USING PHOTODYNAMIC THERAPY

**RESPONSE TO SPECIES ELECTION REQUIREMENT**

Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

This communication is responsive to the Office Action mailed September 24, 2002, in connection with the above referenced patent application. According to the Examiner, the application contains claims directed to patentably distinct species of CD40 binding proteins, namely (a) CD40-specific antibody; (b) CD40L or soluble CD40L; (c) oligomeric protein comprising CD40-specific protein and a second protein; and (d ) oligomeric protein comprising CD40L and a second protein. These CD40 binding proteins are alleged to be distinct because their structures and modes of action are different, and require non-coextensive searches. Applicants respectfully disagree; the listed species are present only in dependant claims. Moreover, 37 CFR 1.146 states that election of species is required where the application contains claims directed to more than a reasonable number of species. Applicants respectfully submit that four is not an unreasonable number of species. Nonetheless, in an effort to be cooperative and speed allowance of the claims, applicants elect species (b), CD40L or soluble CD40L.

The Office Action contained a further species election requirement, for allegedly distinct species of additional agents, wherein the additional agent is (a) none of the active agents listed in claims 3; (b) FasL; (c) CD30L; (d) TRAIL; or (e) TNF alpha. The additional agents are alleged to be distinct because their structures and modes of action are different, and require non-coextensive searches. Applicants respectfully disagree; the listed species are present only in dependant claims. Moreover, 37 CFR 1.146 states that election of species is required where the application contains claims directed to more than a reasonable number of species. Applicants respectfully submit that five is not an

unreasonable number of species. Nonetheless, in an effort to be cooperative and speed allowance of the claims, applicants elect species (c), CD30L.

In view of the foregoing species election and remarks, Applicants submit that all claims pending in this application are in condition for allowance and a notice to that effect is respectfully requested. If the Examiner believes that prosecution could be expedited by way of a telephonic interview, the Examiner is invited to contact the undersigned.

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Respectfully submitted,



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I hereby certify that this correspondence is being deposited  
with the United States Postal Service as first class mail in an  
envelope addressed to: Commissioner of Patent and Trademarks,  
Washington, D.C. 20231, on October 17, 2002

  
(Signature)